

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L LUCKERT,
Plaintiff,

v.

EDWARD GUTIERREZ,
Defendant.

Case No. 19-cv-08204-PJH

ORDER RE MOTIONS AND TRIAL

Re: Dkt. 146, 147, 148, 149, 150

This matter is currently set for jury trial on May 20, 2024, with a final pretrial conference on May 2, 2024. Defendant timely filed his pretrial papers. Plaintiff has filed no pretrial papers but has instead filed five different briefs seeking more discovery among other things. Defendant has responded to the motion entitled Motion to Compel, but not the others. The court will address these filings but will first address the trial schedule.

TRIAL SCHEDULE

As is obvious from the change of address notification, plaintiff is in custody again, this time at Santa Rita County Jail. He has not provided any details or a plan for how the pretrial conference and jury trial can take place. Nor has he requested a postponement of the trial. He has told us though that Santa Rita Jail does not support civil litigation. Because a jury trial requires a great deal of advance planning the court has done a bit of research while trying to figure out how the schedule can be maintained. It has come to the court's attention that plaintiff was arrested February 14, 2024 on a federal warrant issued in *United States v. Michael Luckert*, CR 13-00188 JSW. On April 16, 2024, he was sentenced to a term of incarceration for four months, thus, with credit for time served

1 since his arrest, he should be released mid-June. The court has no authority to order the
 2 Bureau of Prisons or the US Marshal to produce plaintiff for private civil litigation.
 3 Because plaintiff is representing himself, the trial cannot go forward as scheduled.
 4 Rather than enter plaintiff's default for failing to prosecute, and given the court's
 5 knowledge about plaintiff's whereabouts, the court elects to provide plaintiff with one
 6 more opportunity to prosecute his excessive force claim. Accordingly, the current trial
 7 date is VACATED and the following schedule will control:

8 July 1, 2024 any and all pretrial papers must be filed by plaintiff

9 July 12, 2024 deadline for opposition to plaintiff's motions in limine, if any

10 July 18, 2024 Final Pretrial Conference at 1:00 pm in Courtroom 3 in Oakland

11 July 29, 2024 Jury trial, 8:30 am for no more than 5 days

12 13 **PENDING MOTIONS/FILINGS**

14 Plaintiff's pretrial papers were due on April 4, 2024, and as noted above, he filed
 15 none, but instead filed 5 other requests from April 4 – April 15, 2024. They are:

16 Opposition/Objection to defendant's expert disclosures at Dkt. 146

17 Motion to recall Officer Mendoza as a defendant at Dkt. 147

18 Meet and confer letter re production of documents at Dkt. 148

19 Motion to compel discovery that has been previously exchanged at Dkt. 149

20 Motion to substitute defendant Gutierrez for defendant Mendoza at Dkt. 150

21 To the extent that these filings can be understood, plaintiff raises issues that have been
 22 previously litigated, and in some instances dismissed, issues that are duplicative and
 23 repetitive, and issues that simply have no relevance to the discrete claim that remains in
 24 this case. This case involves one claim of excessive force based on allegations that
 25 Sheriff's Deputy Gutierrez used excessive force on plaintiff when he was arrested at the
 26 library and when he was placed in a cell at the county jail.

27 In the motion at Docket 146, plaintiff seeks to have medical neglect added to his
 28 case. However, his claim that he was not provided with medical care was already

1 dismissed in the order at Docket 21.

2 In his motion at Docket 147, plaintiff seeks to “recall Mendoza” and dismiss
3 Gutierrez in favor of calling him as a witness instead. Deputy Mendoza was previously
4 dismissed with prejudice in the order at Docket 89. That order notes that in the briefing of
5 the summary judgment motion, plaintiff requested to switch Gutierrez for Mendoza
6 because he had confused the two. It now appears that he wants to switch them again.
7 However, discovery has closed, dispositive motions have been heard and the trial is
8 imminent. Plaintiff may of course dismiss Gutierrez if he wishes, but Mendoza will not be
9 “recalled.”

10 In his motion at Docket 148, plaintiff requests a document reflecting the date that a
11 surveillance tape at the library was destroyed and he wants the radiology records from
12 San Francisco General Hospital produced in a format that he can use while in jail. The
13 document has already been provided in discovery on several occasions. It appears that
14 plaintiff’s incarceration has resulted in his loss of a number of documents, but the
15 defendant provided plaintiff with a second set of all discovery when he requested it. As
16 for the radiology records, they were produced in the format in which defendant received
17 them from the hospital and it is unclear how they could be reformatted even if defendant
18 had an obligation to reformat them, which he doesn’t.

19 In his motion at Docket 149, plaintiff again seeks the document reflecting the date
20 the surveillance tape was destroyed which has already been supplied to him. Moreover,
21 the defendants whose conduct is captured on the surveillance tape have all been
22 dismissed with prejudice and the tape no longer has any relevance to the remaining claim
23 against Deputy Gutierrez. Plaintiff also seeks another copy of the prior discovery which
24 defendant produced originally and again in March after plaintiff’s incarceration.

25 In his motion ay Docket 150, plaintiff moves again to substitute Mendoza for
26 Gutierrez, adding this time that whoever removed his clothes at the jail, sexually
27 assaulted him. Both Gutierrez and Mendoza have submitted declarations they neither
28 removed plaintiff’s clothing in the cell, rather that was done by other employees. All other

1 defendants have been dismissed with prejudice.

2 All the relief plaintiff seeks in these filings, to the extent the court has understood
3 them, is DENIED. The only motions that the court will entertain from plaintiff going
4 forward are motions in limine in preparation for trial on July 29, 2024. The court normally
5 consults with the parties before setting a trial date, but given the unusual circumstances
6 presented by plaintiff's incarceration, the court has elected to set the jury trial at the
7 earliest time available on this court's calendar following plaintiff's release from custody. If
8 the defendant wants more flexibility in scheduling and if he is concerned about the
9 anticipated narrative form of plaintiff's direct testimony, which will be allowed, defense
10 counsel is reminded that plaintiff waived a jury trial and defendant may as well.

11 **IT IS SO ORDERED.**

12 Dated: April 23, 2024

13
14 /s/ Phyllis J. Hamilton

15 PHYLLIS J. HAMILTON
16 United States District Judge
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